

REMARKS

In the Office Action dated February 7, 2006, claims 1, 2, 5-8, and 22 were rejected under 35 U.S.C. § 102 over U.S. Patent No. 5,504,894 (Ferguson); and claims 9, 10, 13-19, and 23 were rejected under § 103 over Ferguson.

Applicant acknowledges the indication that claims 3, 4, 11, 12, 20, 21, 24, and 25 are allowable if rewritten in independent form.

With respect to claim 1, the Office Action cited column 6, line 65-column 7, line 18, of Ferguson as disclosing the first element of claim 1: during a calibration mode, executing instantiations of a test process to identify load index parameters. In addition, the Office Action stated that Ferguson teaches updating of performance indexes, which was equated by the Office Action as executing plural instantiations of a test process to identify load index parameters during a calibration mode. 2/7/2006 Office Action at 7.

Applicant respectfully disagrees. It is noted that the performance index described in Ferguson refers to a performance index for each transaction class. Ferguson, 3:8-11. As explained by Ferguson, a transaction class is a grouping of transactions based on a variety of characteristics. Ferguson, 3:1-2. Significantly, Ferguson notes that each performance index is updated as more recent transactions are completed. Ferguson, 3:14-18. As explained in further detail in the Detailed Description section of Ferguson, as transactions are completed, performance indexes are updated using the equation identified at line 56 in column 6 of Ferguson. In other words, what Ferguson contemplates is that performance indexes are continually updated during normal operation of the transaction processing system described in Ferguson. There clearly does not exist any concept of calibration mode in Ferguson; moreover, there clearly does not exist any teaching in Ferguson of executing plural instantiations of a test process to identify load index parameters. Note that the performances indexes are updated as transactions are completed – there is clearly no teaching whatsoever of executing plural instantiations of a *test process* to update the performance indexes of Ferguson.

Additionally, note that each performance index in Ferguson is for a transaction class. In contrast, in claim 1, a load index is calculated based on load index parameters for each *engine* of the workload management system. A performance index for a corresponding transaction class is different from a load index for an engine, as recited in claim 1.

In view of the foregoing, it is clear that claim 1 is not anticipated by Ferguson.

Independent claim 9 was rejected as being obvious over Ferguson alone. The Office Action conceded that Ferguson fails to disclose operating in a load insensitive workload distribution mode and operating in a load sensitive workload distribution mode. 2/7/2006 Office Action at 4. However, the Office Action stated that claim 9 would nevertheless have been obvious over Ferguson. *Id.* Applicant respectfully disagrees. There is absolutely nothing in Ferguson to even remotely suggest operating in a load insensitive workload distribution mode for distributing processes until a maximum differential load index exceeds a predetermined threshold, and operating in a load sensitive workload distribution mode for distributing processes until all processes have completed execution once the maximum differential load index exceeds the predetermined threshold. The Office Action cited specifically to column 7, lines 38-42, of Ferguson as purportedly providing some suggestion of the claimed subject matter. The cited passage of Ferguson teaches that “[o]nly changes in the Performance Indices that actually alter the relative ordering of the classes are sent to the BEPs.” The cited passage of Ferguson also teaches that changes that do not change the ordering do not effect the priorities in the BEPs. The cited passage thus merely refers to whether or not to communicate performance indices to BEPs (back-end processors), and whether certain changes in performance indices effect priorities in the BEPs. There is absolutely no suggestion whatsoever in this cited passage of Ferguson, or anywhere else in Ferguson, of operating in a load insensitive workload distribution mode and operating in a load sensitive workload distribution mode under different conditions, as recited in claim 9.

The Office Action has cited no objective evidence that would have suggested a modification of Ferguson to achieve the claimed subject matter. Absent this required evidence, a *prima facie* case of obviousness has clearly not been established with respect to claim 9. Withdrawal of the § 103 rejection of claim 9 is therefore respectfully requested.

Independent claim 17 is allowable for similar reasons as claim 9, since Ferguson fails to teach or suggest switching from a load insensitive workload distribution mode to a load sensitive workload distribution mode for distributing processes under one condition and switching from a load sensitive workload distribution mode to the load insensitive workload distribution mode under a second condition. Moreover, Ferguson clearly fails to teach or suggest switching from

the load insensitive workload distribution mode to a load sensitive workload distribution mode when a maximum differential load index exceeds a first predetermined threshold T1, and switching from the load sensitive workload distribution mode to the load insensitive workload distribution mode when the maximum differential load index is less than a second predetermined threshold T2. There is absolutely no suggestion whatsoever in Ferguson of these thresholds.


Independent claim 23 is also allowable for similar reasons as claims 9 and 17.

Dependent claims, including newly added dependent claim 26, are allowable for at least the same reasons as corresponding independent claims.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (10007861-1).

Respectfully submitted,

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